IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	
	)	DIVISION ONE
JAMES E. WARJONE,	)	
	)	No. 62327-3-I
Appellant,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
ROBIN A. WARJONE,	)	
	)	
Respondent.	)	FILED: May 18, 2009
_____	)	

Dwyer, A.C.J. — A court's principal task in interpreting a contract is to determine the parties' intent. To that end, it may consider extrinsic evidence regarding the formation of the contract and the parties' intent at the time of the agreement. In this dispute regarding the meaning of a maintenance provision in a separation agreement, the superior court concluded that the parties' intent was clear from their agreement and that it need not consider extrinsic evidence regarding their negotiations. Because we conclude that the parties' intent is not clear from their agreement, we remand for consideration of the extrinsic evidence and resolution of any issues of fact.

FACTS

James and Robin Warjone divorced in 1990. The decree of dissolution incorporated a separation contract signed by the Warjones with the advice of counsel.

Paragraph VI of the contract provides Robin with lifetime maintenance. It directs James to pay her $8,000 per month until she dies, reaches age 65, remarries, or lives with an unrelated adult. When any of the latter three events occurs, maintenance is immediately reduced to $2,000 per month. Paragraph VI then states:

> At any time, at Husband's sole discretion, Husband may satisfy all obligations to pay maintenance to Wife by making to Wife a lump sum payment in an amount equal to the present value of all future maintenance payments due on the date of the lump sum payment through June 1, 2008 at a discount rate of ten percent.

In June 2003, James told Robin that he intended to make a lump sum maintenance payment of $568,553.20, and that the payment would terminate his maintenance obligations under Paragraph VI. Robin responded that the lump sum payment only satisfied the portion of the maintenance obligation due as of June 1, 2008. The parties agreed that Robin could withdraw the lump sum without waiving her right to contest James's interpretation of the Separation Contract.

On June 17, 2008, just before her 65th birthday, Robin moved for clarification of the contract. In response, James submitted a declaration alleging that the parties had agreed during negotiations that a lump sum payment would satisfy his entire maintenance obligation. Robin submitted a declaration denying James's allegation and alleging instead that the parties had negotiated for prepayment of the maintenance due as of June 1, 2008, but not for any maintenance due after that date. James moved to strike this portion of Robin's

declaration on the ground that it violated the rule prohibiting the use of extrinsic evidence to contradict or modify the terms of a written contract. After denying the motion to strike, a court commissioner ruled that

> [the] parties intended, as evidenced by [the] plain meaning of [the] separation contract, that husband's maintenance obligation would continue at the rate of $2,000/month from age 65 (wife) 'till death in event husband elected to exercise right to prepay portion of maintenance due until age 65.

The court stated that it considered only the portions of the parties' declarations that were "germaine to [Robin's] motion to clarify."

James moved to revise the commissioner's ruling, arguing that the contract was unambiguous and that all of his maintenance obligations were satisfied by the lump sum payment. In denying the motion, the superior court stated:

> When Section VI of the separation contract is read in its entirety, it becomes clear that the contract permitted prepayment of the $8,000 per month maintenance payment for those sums due up until age sixty-five, but that no provisions were made for prepayment for obligations due beyond that date. Therefore, the husband's payment in 2003 did not act to extinguish maintenance payments due after the wife turned sixty-five.

The court stated that "the only extrinsic fact considered by the court was the undisputed assertion in the wife's declaration that she turned sixty five in June of 2008."

DECISION

When parties to a separation contract dispute its meaning, courts must ascertain and effectuate their intent at the time they formed the agreement. In re

Marriage of Boisen, 87 Wn. App. 912, 920, 943 P.2d 682 (1997). Courts accomplish this by "'viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.'" Berg v. Hudesman, 115 Wn.2d 657, 667, 801 P.2d 222 (1990) (quoting Stender v. Twin City Foods, Inc., 82 Wn.2d 250, 254, 510 P.2d 221 (1973)). It is our duty to read a contract or decree as a whole and in such a manner that every term is given effect. Stokes v. Polley, 145 Wn.2d 341, 346-47, 37 P.3d 1211 (2001) (dissolution decree); City of Woodinville v. Northshore United Church of Christ, 139 Wn. App. 639, 651,162 P.3d 427 (2007) (contract).[1] We review a trial court's interpretation de novo. Berg, 115 Wn.2d at 668 (contract interpretation is a question of law which we review de novo); In re Marriage of Chavez, 80 Wn. App. 432, 435, 909 P.2d 314 (1996) (interpretation of a dissolution decree is a question of law subject to de novo review). When, as in this case, the appeal is taken from an order on revision of a court commissioner's decision, we review the superior court's decision, not the commissioner's. In re Estate of Wright, 147 Wn. App. 674, 680, 196 P.3d 1075 (2008) (quoting State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004)).

[1] See also Ball v. Stokely Foods, Inc., 37 Wn.2d 79, 83, 221 P.2d 832 (1950) ("in the interpretation of contracts . . . every word and phrase must be presumed to have been employed with a purpose and must be given a meaning and effect whenever reasonably possible"); Wagner v. Wagner, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980) ("An interpretation of a writing which gives effect to all of its provisions is favored over one which renders some of the language meaningless or ineffective.").

Our sole task in this appeal is to determine the meaning of the prepayment provision in the parties' Separation Contract. That determination centers on the meaning of the words "[h]usband may satisfy all obligations to pay maintenance to Wife." Robin contends, and the superior court concluded, that this language applies only to the portion of James's maintenance obligation due as of June 1, 2008. Although acknowledging that the words "all obligations" appear, in isolation, to encompass the entire maintenance obligation, Robin contends those words have a more limited meaning when viewed in context. This contention has some merit.

It is clear from a reading of the entire maintenance provision that the parties intended to provide lifetime maintenance for Robin in at least some circumstances. Robin argues, and we agree, that a broad reading of "all obligations" nullifies that intent and renders the language creating lifetime maintenance meaningless. As she notes, "[i]t is impossible to conceive of circumstances where Jim would not prepay the remainder of the first portion of the maintenance obligation and avoid payment of any further maintenance." James offers no persuasive response to this assertion.

James contends that he might not have exercised the prepayment option if he had been short on cash or if he thought Robin might remarry or otherwise trigger the contractual reduction in maintenance from $8,000 to $2,000 per month. But this ignores the fact that the prepayment provision allowed prepayment "at any time." Given that language, James could wait until two

months before Robin's 65th birthday, pay a lump sum for both months, and thereby terminate his maintenance obligation. Realistically, there is no reason why he would not do so. To do so would cost him just two maintenance payments, minus the 10 percent discount, to avoid paying lifetime maintenance of $2,000 per month.

We are also not persuaded by James's claim that Robin could sue him for breach of the implied covenant of good faith and fair dealing if he waited until shortly before June 1, 2008, to make his lump sum payment. The agreement unambiguously allows a lump sum payment "at any time" for amounts due through June 1, 2008. Robin could not legitimately claim that a prepayment at any point before that date was in bad faith.

In short, we agree with Robin that a broad reading of "all obligations" renders the lifetime maintenance language meaningless and fails to give effect to all the terms of the agreement. But this does not resolve the question before us because, as James correctly points out, Robin's narrow reading of the prepayment provision is equally problematic.

We generally give words in a contract their ordinary meaning.[2] In this case, the words "[h]usband may satisfy *all obligations to pay maintenance to Wife*" are seemingly clear. (Emphasis added). If, as Robin suggests, the prepayment provision applies only to part of James's maintenance obligation,

[2] Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 504, 115 P.3d 262 (2005). Although we need not give words their plain meaning when "the entirety of the agreement *clearly demonstrates* a contrary intent," Hearst, 154 Wn.2d at 504 (emphasis added), the agreement in this case, while raising doubts, does not *clearly* demonstrate a contrary intent.

then the words "all obligations to pay maintenance" are stripped of their plain meaning and effectively rewritten. Her interpretation thus destroys the principal value of the prepayment option—i.e,. relief from the maintenance obligation. All that is left is an option to prepay a portion of the obligation at a discount. Given that the primary purpose of the discount is to reduce the future obligation to a present value, Robin's interpretation effectively guts the prepayment provision.

Thus, neither party's interpretation gives effect to all of the terms of the agreement. Nor is one interpretation obviously more reasonable than the other. In such circumstances, the parties' intent should not be declared without considering all available extrinsic evidence bearing on their intent.

Because declarations concerning the parties' negotiations were submitted below, and because the superior court did not consider them, we remand for consideration of all admissible extrinsic evidence and resolution of any factual issues raised by that evidence. James's motion to strike and the parties' requests for attorney fees, including fees on appeal, can be taken up by the superior court at that time.

Remanded for further proceedings.

Dwyer, A.C.J.

WE CONCUR:

Schindler, C.J. Appelwick, J.